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9 **BEFORE THE**
RESPIRATORY CARE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. S-392

13 NICHOLAS MARCEL BLACK
2526 N. Loretta Circle
14 Simi Valley, California 93065

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Respiratory Care Board of California,
21 Department of Consumer Affairs (Board).

22 2. On or about May 18, 2007, the Board received an application for a
23 Respiratory Care Practitioner License from Nicholas Marcel Black (Respondent). On or about
24 May 16, 2007, Respondent certified under penalty of perjury to the truthfulness of all statements,
25 answers, and representations in the application. The Board denied the application on September
26 14, 2007.

27 JURISDICTION

28 3. This Statement of Issues is brought before the Board under the authority of

1 the following laws. All section references are to the Business and Professions Code (Code) unless
2 otherwise indicated.

3 4. Section 3710 of the Code states: “The Respiratory Care Board of California,
4 hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the
5 Respiratory Care Practice Act].”

6 5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and
7 revoke licenses to practice respiratory care as provided in this chapter.”

8 6. Section 3732, subdivision (b) of the Code states:
9 “The board may deny an application, or may order the issuance of a license
10 with terms and conditions, for any of the causes specified in this chapter for
11 suspension or revocation of a license, including, but not limited to, those causes
12 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.”

13 7. Section 3750 of the Code states:
14 “The board may order the denial, suspension or revocation of, or the
15 imposition of probationary conditions upon, a license issued under this chapter, for
16 any of the following causes:

17 “ . . .

18 “(d) Conviction of a crime that substantially relates to the qualifications,
19 functions, or duties of a respiratory care practitioner. The record of conviction or a
20 certified copy thereof shall be conclusive evidence of the conviction.

21 “. . . .”

22 8. Section 3752 of the Code states:
23 “A plea or verdict of guilty or a conviction following a plea of nolo
24 contendere made to a charge of any offense which substantially relates to the
25 qualifications, functions, or duties of a respiratory care practitioner is deemed to be
26 a conviction within the meaning of this article. The board shall order the license
27 suspended or revoked, or may decline to issue a license, when the time for appeal
28 has elapsed, or the judgment of conviction has been affirmed on appeal or when an

1 order granting probation is made suspending the imposition of sentence, irrespective
2 of a subsequent order under Section 1203.4 of the Penal Code allowing the person
3 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
4 the verdict of guilty, or dismissing the accusation, information, or indictment.”

5 9. California Code of Regulations, Title 16, section 1399.370, states:

6 “For the purposes of denial, suspension, or revocation of a license, a crime
7 or act shall be considered to be substantially related to the qualifications, functions
8 or duties of a respiratory care practitioner, if it evidences present or potential
9 unfitness of a licensee to perform the functions authorized by his or her license or in
10 a manner inconsistent with the public health, safety, or welfare. Such crimes or acts
11 shall include but not be limited to those involving the following:

12 “ . . .

13 “(c) Conviction of a crime involving driving under the influence or reckless
14 driving while under the influence.

15 “”

16 COST RECOVERY

17 10. Section 3753.5, subdivision (a) of the Code states:

18 "In any order issued in resolution of a disciplinary proceeding before the
19 board, the board or the administrative law judge may direct any practitioner or
20 applicant found to have committed a violation or violations of law to pay to the
21 board a sum not to exceed the costs of the investigation and prosecution of the
22 case."

23 11. Section 3753.7 of the Code states:

24 "For purposes of the Respiratory Care Practice Act, costs of prosecution
25 shall include attorney general or other prosecuting attorney fees, expert witness fees,
26 and other administrative, filing, and service fees."

27 12. Section 3753.1, subdivision (a) of the Code states:

28 "An administrative disciplinary decision imposing terms of probation may

1 include, among other things, a requirement that the licensee-probationer pay the
2 monetary costs associated with monitoring the probation."

3 CAUSE FOR DENIAL OF APPLICATION

4 (Conviction of a Crime)

5 13. Respondent's application is subject to denial under Business and
6 Professions Code sections 3750, subdivision (d), 3752, and California Code of Regulations,
7 Title 16, section 1399.370, subdivision (c), in conjunction with Business and Professions
8 Code section 3732, subdivision (b), in that Respondent was convicted of crimes
9 substantially related to the qualifications, functions or duties of a respiratory care
10 practitioner. The circumstances are as follows:

11 March 23, 2005 Conviction

12 A. On or about February 4, 2005, a California Highway Patrol (CHP)
13 officer observed Respondent driving his pickup truck at about 90 miles per hour,
14 weaving, and crossing over the lane lines. Respondent almost collided with two
15 semi-trucks as he passed them. The CHP officer activated his emergency vehicle
16 lights and initiated an enforcement stop. As the officer spoke with Respondent, he
17 smelled the distinct odor of alcohol coming from the vehicle, Respondent's breath
18 and his person. Respondent's eyes were red and watery and his speech was slurred.
19 He admitted he had been drinking five cans of beer that evening. When asked if he
20 felt the effects of the drinks, Respondent stated, "Absolutely I do." He failed to
21 successfully complete the field sobriety tests. He was placed under arrest for
22 driving while under the influence of alcohol. The results of Respondent's breath
23 test indicated his blood alcohol level was .13%.

24 B. On or about March 1, 2005, in Ventura County Superior Court
25 Complaint No. 2005003732MA, Respondent was charged with driving under the
26 influence of alcohol, in violation of Vehicle Code section 23152, subdivision (a), a
27 misdemeanor (Count 1), and driving with .08% or higher blood alcohol level, in
28 violation of Vehicle Code section 23152, subdivision (b), a misdemeanor (Count 2).

1 C. On or about March 23, 2005, Respondent was convicted upon his
2 plea of nolo contendere to driving with .08% or higher blood alcohol level (Count
3 2) . He was placed on probation for three years with the following terms and
4 conditions, among others: serve 48 hours in county jail, complete a 90-day first
5 conviction drinking driving program and pay fines of \$1,649.00. His driving
6 privilege was restricted for 90 days. Count 1 of the complaint was dismissed. On
7 or about April 11, 2005, Respondent's probation was modified. The court deleted
8 the first offender program and the 90 day driving privilege restriction. The court
9 ordered Respondent to complete the multiple conviction drinking driver program
10 and restricted his driving privilege for 18 months.

11 November 4, 2002 Conviction

12 D. On or about September 21, 2002, a San Diego police officer made an
13 enforcement stop when he observed that Respondent fail to stop at a stop sign while
14 driving his pick-up truck. As the officer spoke with Respondent, he smelled the
15 odor of alcohol coming from Respondent's breath. Respondent's eyes were watery
16 and he swayed while he was standing. He admitted to the officer that he had three
17 beers within the last hour. Respondent failed to successfully complete the field
18 sobriety tests. He was placed under arrest for driving while under the influence of
19 alcohol. The results of Respondent's breath tests indicated his blood alcohol levels
20 were .10%, .13% and .12%.

21 E. On or about October 8, 2002, in San Diego County Superior Court
22 Complaint No. M875773, Respondent was charged with driving under the influence
23 of alcohol, in violation of Vehicle Code section 23152, subdivision (a), a
24 misdemeanor (Count 1), and driving with .08% or higher blood alcohol level, in
25 violation of Vehicle Code section 23152, subdivision (b), a misdemeanor (Count 2).
26 On or about November 4, 2002, an amendment to the complaint was filed, charging
27 Respondent with reckless driving, in violation of Vehicle Code section 23103,
28 subdivision (a), a misdemeanor (Count 3).

1 F. On or about November 4, 2002, Respondent was convicted upon his
2 plea of guilty to reckless driving (Count 3). He was placed on probation for three
3 years with the following terms and conditions, among others: serve 1 day in county
4 jail (with credit for 1 day), complete a first conviction drinking driving program,
5 complete a Mothers Against Drunk Drivers program and pay fines and fees of
6 \$888.00. His driving privilege was restricted for one year. Counts 1 and 2 of the
7 complaint were dismissed.

8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters
10 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

11 1. Denying the application of Nicholas Marcel Black for a Respiratory
12 Care Practitioner License;

13 2. Directing Nicholas Marcel Black to pay the Respiratory Care Board
14 the costs of the investigation and enforcement of this case, and if placed on probation, the
15 costs of probation monitoring;

16 3. Taking such other and further action as deemed necessary and
17 proper.

18 DATED: December 4, 2007

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21 Original signed by Liane Zimmerman for:
22 STEPHANIE NUNEZ
23 Executive Officer
24 Respiratory Care Board of California
25 Department of Consumer Affairs
26 State of California
27 Complainant
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